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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,015	02/28/2002	John M. Hess III	SEA0820P0882US	2643
32116	7590	01/05/2006	EXAMINER	
WOOD, PHILLIPS, KATZ, CLARK & MORTIMER 500 W. MADISON STREET SUITE 3800 CHICAGO, IL 60661			KEASEL, ERIC S	
			ART UNIT	PAPER NUMBER
			3754	

DATE MAILED: 01/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/087,015

Applicant(s)

HESS ET AL.

Examiner

Eric Keasel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

- A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2003.
- 2a) ☐ This action is FINAL.
- 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some \* c) ☐ None of:
  - 1. ☐ Certified copies of the priority documents have been received.
  - 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4, 7.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

2. Claims 9-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Massioui (US Patent Number 6,000,848) in view Viegas (US Patent Number 5,307,955).

Massioui discloses a package comprising a collapsible pouch defined by at least two opposing, flexible web portions (80) that are sealed together adjacent an interior region which is unsealed and that are separated at a peripheral region to define an opening to the interior region; a fitment that includes a ribbed base (12) sealingly secured to said web portions along said opening, two lateral ends that define sidewalls which converge (see Fig. 1 or 2), a spout (31)

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extending from said base and terminating with an end defining a dispensing orifice, and a dispensing passage that extends from said interior region through said base and spout to said dispensing orifice. Massioui fails to disclose the flexible valve in the fitment. Viegas discloses a self-sealing slit valve (30) in a similar fitment attached to a similar flexible bag structure. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used the self-sealing flexible slit valve of Viegas with the package of Massioui in order to eliminate the need to operate a removable closure when the dispensing product as taught by Viegas.

3. Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Massioui in view of Viegas and Hammond et al. (US Patent Number 4,830,205).

Massioui discloses a package comprising a collapsible pouch defined by at least two opposing, flexible web portions (80) that are sealed together adjacent an interior region which is unsealed and that are separated at a peripheral region to define an opening to the interior region; a fitment that includes a ribbed base (12) sealingly secured to said web portions along said opening, two lateral ends that define sidewalls, which converge (see Fig. 1 or 2), a spout (31) extending from said base and terminating with an end defining a dispensing orifice, and a dispensing passage that extends from said interior region through said base and spout to said dispensing orifice. Massioui fails to disclose the flexible valve in the fitment. Viegas discloses a self-sealing slit valve (30) in a similar fitment attached to a similar flexible bag structure. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used the self-sealing flexible slit valve of Viegas with the package of Massioui in

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order to eliminate the need to operate a removable closure when the dispensing product as taught by Viegas.

The modified Massioui fails to disclose the removable and disposable cover formed as extensions of at least two of said pouch web portions which enclose the fitment spout and which have peripheral margins sealed together to define a hermetically sealed volume around the fitment spout. Hammond et al. disclose a removable and disposable cover (26) formed as extensions of at least two of said pouch web portions in a similar package. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used the removable and disposable cover formed as extensions of at least two of said pouch web portions of Hammond et al. with the package of the modified Massioui in order to keep the contents sterile up to the moment when it is required for use as taught by Hammond et al.

#### *Conclusion*

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Keasel whose telephone number is (571) 272-4929. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Eric Keasel* 9 DEC 2005

Eric Keasel  
Primary Examiner  
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